

Federal Communications Commission

DA 00-2238

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Susquehanna, Pennsylvania and Conklin,
New York))

MM Docket No. 99-278

RM-9424

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 20, 2000;

Released: September 29, 2000

By the Chief, Allocations Branch:

1. At the joint request of Majac of Michigan, Inc. ("Majac"), licensee of Station WKGB-FM, Channel 223A, Susquehanna, Pennsylvania, and Equinox Broadcasting Corporation ("Equinox"), licensee of Station WCDW(FM), Channel 263A, Conklin, New York, the Allocations Branch has before it the Notice of Proposed Rule Making, 14 FCC Rcd 15320 (1999). The Notice proposed the reallocation of Channel 223A from Susquehanna, Pennsylvania, to Conklin, New York, and the modification of Station WKGB-FM's license accordingly. It also proposed the reallocation of Channel 263A from Conklin, New York to Susquehanna, Pennsylvania, and the modification of Station WCDW(FM)'s license accordingly. Petitioners filed comments in support of the proposals reaffirming their intention to apply for the respective channels if, allotted to the specified communities. Reply comments were also filed by petitioners.

2. The proposed reallocations were filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community").

3. In considering a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change Community, *supra*. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our

FM allotment priorities.¹ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

4. In making this comparison, we find that both the existing and proposed arrangement of allotments trigger priority (3)--first local service. Under this priority, both communities would retain a first local service. In this joint proposal each community's Class A FM allotment will be exchanged. Equinox proposes a Station WCDW(FM) transmitter site at Susquehanna that will comply with all Commission technical requirements. On the other hand, Majac proposes to relocate Station WKGB-FM's transmitter site. While maintaining maximum Class A FM facilities, Station WKGB-FM will provide service to an additional 58,691 persons. The transmitter site relocation will result in 16,445 persons losing service. However, this population will continue to receive service from at least five other radio stations.

5. As indicated in the Notice, Conklin lies partially within the Binghamton Urbanized Area. Station WKGB-FM currently provides a 70 dBu service to 11.5% of the Urbanized Area. At the proposed reference site, Station WKGB-FM will provide a 70 dBu service to 69.1% of the Urbanized Area. Although we generally apply Huntington and require a Tuck² showing when a station seeks to reallocate a channel from a community located outside of an urbanized area to a community located partially or entirely within an urbanized area, we do not believe that Huntington or Tuck should apply in this case because there is no first local service preference at issue here and because no community will lose or be denied FM service. Rather, the petitioners essentially propose to exchange communities of license; as a result, both communities will retain first local aural services. However, since Station WKGB-FM seeks to change its transmitter site, Majac provided the required gain and loss area study. Equinox was requested in the Notice to provide a gain and loss area study for Station WCDW(FM) for the alternate full-spaced site proposed, and it has complied accordingly.

6. We believe the public interest would be served by reallocating Channel 223A to Conklin, New York; and by reallocating Channel 263A to Susquehanna, Pennsylvania, because it would enable Station WKGB-FM to expand its service area while maintaining a local service at both Susquehanna and Conklin.

Technical Summary

¹ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3).]

² See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951) Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Tuck sets forth various factors for determining whether a first local service preference is warranted to a suburban community of an urbanized area.

7. An engineering analysis has determined that Channel 223A can be reallocated to Conklin in compliance with the Commission's minimum distance separation requirements at Station WKGB-FM's requested site.³ Additionally, Channel 263A can be reallocated to Susquehanna in compliance with the Commission's minimum distance separation requirements at Station WCDW(FM)'s requested site.⁴ Since Conklin and Susquehanna are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WKGB-FM's license to specify operation on Channel 223A at Conklin, New York, as its new community of license. Likewise, we modify Station WCDW(FM)'s license to specify operation on Channel 263A at Susquehanna, Pennsylvania, as its new community of license.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective, November 13, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Susquehanna, Pennsylvania	263A
Conklin, New York	223A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Majac of Michigan, Inc., for Station WKGB-FM at Susquehanna, Pennsylvania, IS MODIFIED to specify operation on Channel 223A at Conklin, New York, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance

³ The reference coordinates for Channel 223A at Conklin are 42-06-53 North Latitude and 75-51-16 West Longitude.

⁴ The reference coordinates for Channel 263A at Susquehanna are 42-02-30 North Latitude and 75-41-30 West Longitude. However, Equinox currently intends to continue operating Station WCDW(FM) at its existing transmitter site pursuant to Section 73.215 of the Commission's Rules. Nevertheless, the allotment reference coordinates are fully-spaced under Section 73.207 of the Commission's Rules.

with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Equinox Broadcasting Corporation for Station WCDW(FM) at Conklin, New York, IS MODIFIED to specify operation on Channel 263A at Susquehanna, Pennsylvania, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Majac of Michigan, Inc. and Equinox Broadcasting Corporation, licensees of Stations WKGB-FM and WCDW(FM), respectively, are required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

12. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to petitioners, as follows:

Majac of Michigan, Inc.
1025 Reynolds Road
Johnson City, New York 13790
(Licensee of Station WKGB-FM)

Equinox Broadcasting Corporation
1907 Darby Road
Havertown, Pennsylvania 19083
(Licensee of Station WCDW(FM))

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Sharon P. McDonald, Mass

Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**